

Revised July 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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Jody Smith	:	
	:	CIVIL ACTION NO.: 1:25-cv-00425-RA-KHP
	:	
Plaintiff,	:	
	:	
against	:	
	:	
Exposure is Everything LLC	:	
d/b/a Fluent	:	
Defendant.	:	
-----	X	

PROPOSED CASE MANAGEMENT PLAN AND REPORT OF RULE 26(f) MEETING

Court Expectations

Rule 1 and Rule 26(b)(1). Counsel are expected to have reviewed Rule 1 and Rule 26(b)(1) and considered their obligations thereunder in discussing and preparing a discovery plan.

Additional consideration of proportionality. Counsel shall discuss and consider whether phased or iterative discovery will increase efficiency, reduce costs and lead to a faster resolution of the case when preparing a discovery plan.

Document Requests. Counsel shall be fully familiar with their obligations under Rules 34 and 26(g) and consider and discuss ways to ensure compliance and minimize disputes regarding overbreadth and specificity of requests and responses.

Competence. Counsel shall be sufficiently knowledgeable in matters relating to their clients' technological systems to discuss competently issues relating to electronic discovery, or have involved someone competent to address these issues on their behalf.

Counsel are directed to the Model Confidentiality Stipulation and Order and Discussion Topics for Rule 26(f) Conference on Judge Parker's Individual Practices Page.

Counsel represent by their signature below that they have read and will comply with the above.

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Proposed Discovery Plan

In accordance with Federal Rule of Civil Procedure 26(f) and Judge Parker's Individual Rules, the parties met on (none) **(at least one week before the Initial Case Management Conference) and are exchanging communications thereafter. At least one week before the Initial Case Management Conference, the parties submit the following report for the Court's consideration:**

2. Summary of Claims, Defenses, and Relevant Issues

Plaintiff:

The Defendant in this matter is in default. The Plaintiff has moved for entry of default and intends to seek discovery as to the classwide claims to determine if a class default judgment is feasible. Plaintiff will then file a motion for default judgment arising out of the violations of the TCPA described in the Complaint. This is a putative class action for violations of the TCPA. The Plaintiff alleges that the Defendant sent multiple text messages to the Plaintiff's cell phone without his consent.

Defendant:

3. Basis of Subject Matter Jurisdiction: This case arises out of the Federal Telephone Consumer Protection Act, which is a federal statute, and as such this case arises under Federal Question Subject Matter Jurisdiction.

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4. **Subjects on Which Discovery May Be Needed**

Plaintiff(s):

The Plaintiff intends to request discovery from the Defendant's telephone carrier to see if it is feasible to certify a class and obtain a classwide default judgment. Plaintiff then intends to move for default judgment as appropriate, based on information confirming the number of text messages sent to Plaintiff and potentially other class members.

Defendant(s):

5. **Informal Disclosures**

The information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure was **disclosed by Plaintiff(s)** on (N/A). In addition, on (N/A), Plaintiff(s) produced/will produce an initial set of relevant documents identified in its Initial Disclosures and will continue to supplement its production.

The information required by Rule 26(a)(1) of the Federal Rules of Civil Procedure was **disclosed by Defendant(s)** on _____. In addition, on _____, Defendant(s) produced/will produce an initial set of relevant documents identified in its Initial Disclosures and will continue to supplement its production.

6. **Formal Discovery**

The parties jointly propose to the Court the following discovery plan:

All fact discovery must be completed by 7/31/2025.

The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the parties on consent without application to the Court, provided that the parties meet the deadline for completing fact discovery set forth in 3(a) above.

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- 7/31/2025
- a. Depositions: Depositions shall be completed by _____ and limited to no more than 3 depositions per party. Absent an agreement between the parties or an order from the Court, non-party depositions shall follow initial party depositions.
- b. Interrogatories: Initial sets of interrogatories shall be served on or before 6/30/2025. All subsequent interrogatories must be served no later than 30 days prior to the discovery deadline.
- c. Requests for Admission: Requests for admission must be served on or before 6/30/2025.
- d. Requests for Production: Initial requests for production were/will be exchanged on 4/30/2025 and responses shall be due on 5/30/2025. All subsequent requests for production must be served no later than 30 days prior to the discovery deadline.
- e. Supplementation: Supplementations under Rule 26(e) must be made within a reasonable period of time after discovery of such information.

7. Anticipated Discovery Disputes

Are there any anticipated discovery disputes? Does either party seek limitations on discovery? Describe.

As Defendant is in default, the Plaintiff intends to seek discovery from third parties, including the Defendant's telephone provider/vendors.

8. Amendments to Pleadings

- a. Are there any amendments to pleadings anticipated? No.
- b. Last date to amend the Complaint: 5/30/2025

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9. Joinder of Parties

- a. Are there other necessary parties that need to be joined? Y/N (N)
- b. Is joinder of other parties anticipated? No.
- c. Last date to join other parties: 5/30/2025

10. Expert Witness Disclosures

At this time, the parties do/do not (circle one) anticipate utilizing experts. Expert discovery shall be completed by Do not, 7/31/2025.

11. Electronic Discovery and Preservation of Documents and Information

- a. Have the parties discussed electronic discovery? No, as Defendant is in Default
- b. Is there an electronic discovery protocol in place? If not, when the parties expect to have one in place? No, as Defendant is in Default
- c. Are there issues the parties would like to address concerning preservation of evidence and/or electronic discovery at the Initial Case Management Conference?

No.

12. Anticipated Motions

Potential Motion for Class Certification

Motion for Default Judgment

13. Early Settlement or Resolution

The parties have/have not (circle one) discussed the possibility of settlement. The parties request a settlement conference by no later than No, N/A.

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The following information is needed before settlement can be discussed:

Defendant will need to appear and seek to cure any default.

14. Trial

- a. The parties anticipate that this case will be ready for trial by N/A.
- b. The parties anticipate that the trial of this case will require N/A days.
- c. The parties request a jury/bench (circle one) trial. Jury
- d. The parties consent/do not consent (circle one) to Magistrate Judge
jurisdiction at this time. Plaintiff consents. Defendant is in default.

15. Other Matters

As indicated, the Defendant is in default, and as such, the parties did not conduct any
26(f) conference, but Plaintiff has filed the same to ensure compliance with this
Court's order directing the filing of the same.

The parties are advised that they may consent to Magistrate Judge jurisdiction at any time during the case pursuant to 28 USC § 636(c). To consent to Magistrate Judge jurisdiction for all purposes or specific dispositive motions, please utilize the consent form on Judge Parker's Individual Practices Webpage.

Respectfully submitted this 23 day of April, 2025.

ATTORNEYS FOR PLAINTIFF(S):



ATTORNEYS FOR DEFENDANT(S):

